

Message

From: Calli, Rosemary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E17C62EB477B48CFA42C0CEDD631C005-HALL, ROSEMARY]
Sent: 1/19/2021 8:16:29 PM
To: Armor, Suzanne [Armor.Suzanne@epa.gov]
Subject: RE: My notes on Miccosukee Tribe of Indians of Florida 1/11/21 consultation meeting

Thank you, Suzanne.

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Tuesday, January 19, 2021 2:42 PM
To: McGill, Thomas <McGill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>
Cc: Creswell, Michael <Creswell.Michael@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Maher, Lauren <Maher.Lauren@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: My notes on Miccosukee Tribe of Indians of Florida 1/11/21 consultation meeting

Here are my notes, for your use/review. They are verbatim what I heard, and might be a bit confusing in parts as the conversation jumped around a bit. But figured you might find them useful in assembling the "official" notes, to the extent you're engaging in such an effort.

Save the Date: Florida 404 Assumption Consultation with Miccosukee Tribe of Indians of Florida

Tuesday, January 19, 2021
1:47 PM

Meeting Date: 1/11/2021 2:00 PM

Location: Microsoft Teams Meeting

Link to Outlook Item: [click here](#)

Invitation Message

Participants

[Armor, Suzanne](#) (Meeting Organizer)
[R4ORC.SPECIALASSISTANT](#)
[Rubini, Suzanne](#)
[Jeanine Bennett](#) (Accepted in Outlook)
[Minoli, Kevin](#) (Accepted in Outlook)
[Kevin Donaldson](#)
[Gene Duncan](#)
[Holmes, Joshua R CIV USARMY CESAJ \(USA\)](#)
[Sabin, Krista D CIV USARMY CESAJ \(USA\)](#) (Accepted in Outlook)
[Conroy, Brandon J CIV USARMY \(USA\)](#) (Accepted in Outlook)
[BARRON, Robert B \(Bob\) CIV USARMY CESAJ \(US\)](#)
[Beter, Dale E CIV USARMY CESAJ \(USA\)](#)
[Moore, Robin E CIV USARMY CESAJ \(USA\)](#) (Accepted in Outlook)
[Zarbo, Alisa A CIV USARMY CESAJ \(USA\)](#) (Accepted in Outlook)
[Hogan-Charles, Melinda G CIV USARMY CESAJ \(USA\)](#)
[Thomas, Cynthia G \(Cindy\) CIV USARMY CESAJ \(USA\)](#) (Accepted in Outlook)
[Zinszer, Shawn H CIV USARMY CESAJ \(US\)](#) (Accepted in Outlook)
[Gettle, Jeaneanne](#) (Accepted in Outlook)

Mcgill, Thomas (Accepted in Outlook)
Calli, Rosemary (Accepted in Outlook)
Laycock, Kelly
Ghosh, Mita
Hicks, Matt
Creswell, Michael (Accepted in Outlook)
Nagrani, Kavita (Accepted in Outlook)
Pugh, Katherine (Accepted in Outlook)
Hurld, Kathy
CraigV@miccosukeetribes.com
Amy Castaneda (Accepted in Outlook)
Boochopee@gmail.com
Kupchan, Simma (Accepted in Outlook)
Siegal, Tod
Andrew.D.Kelly@usace.army.mil
Palmer, Leif
Zimmerman, Eve (Accepted in Outlook)
Maher, Lauren (Accepted in Outlook)
Beck, Whitney

Notes

- Jeanine Bennett (MTIF):
 - Our relationship with the EPA and the Corps has come a long way
 - Endeavor to partner with feds and State of Florida
 - Greater opportunity with cooperation than with fighting or litigation
 - State has tried this [404 assumption] once before
 - Under CWA, States have an opportunity for assumption, but so do Tribes
 - Need to fully evaluate the impacts to tribal waters, people, sovereignty
 - What happened was that it was told to the MTIF that the Tribe wouldn't have to go to the State for permitting of "its lands and camps"
 - Including Leased Lands in WCA-3A and federally-owned lands (BCNP and ENP?)
 - The Tribe feels "side-swiped" with fact that federal partners would be responsible giving the State control for areas that Tribe had been told State would have no part in
 - Believe that we "gifted" these areas to the State
 - Need to understand MTIF rights in these areas and the effects of the end result of assumption
 - Tribe feels blind-sided.
- Jeaneanne Gettle (EPA):
 - At no time did we intend to surprise anyone
 - We believe that when we can cooperate, it is the most beneficial for all involved
 - We are committed to having these conversations
 - We may not have all the answers today - so we may need additional meets
 - We may not get to a point where we agree, but where we can agree that we've understood each other
- Col. Kelly (USACE):
 - Reiterates commitment to consultation
- Review of definition of Indian country at 18 U.S.C. 1151
- J. Bennett:
 - WCA-3A: FILCSA Lease Agreement
 - Section 6(b) says this is Indian reservation for certain purposes
 - When they built I-10 (?), this separated the Reservation; the Tribe subsequently sued
 - In the Settlement, FDEP gave the Tribe certain rights in WCA-3A
 - Tribe views this as designating this Reservation lands

- EPA's narrow view excludes WCA-3A from IC def'n
- Miccosukee Reserved Area - requires that the Tribe be responsible for water quality within MRA and impacts to it
 - (S. Armor note: EPA agrees that MRA is Indian country, and, in fact, has approved the Tribe's TAS and WQS for MRA).
- J.Gettle:
 - Is the concern for WCA-3A that it should be treated as if it were reservation, or downstream, or both?
- J.Bennett: Both. WCA-3A lies between MRA and the Federal Reservation (Alligator Alley?).
 - Confirm allotments are not an issue for the Tribe.
 - Within BCNP, there are traditional tribal members who own land in fee simple
 - Own individually
 - Tribe provides certain services and is responsible for seeking permits in the name of the Tribe for these individuals
 - G.Duncan (MTIF): Indian Health Service (IHS) helps fund septic, etc. within BCNP because it is "Indian country."
 - If the Tribe has occupied an area traditionally, this is the homeland
 - Members in these areas receive services from the Tribe, including:
 - Health service
 - General welfare
 - If they have to drill a well, Tribe does this for them
 - Build houses
 - Add fill material
 - Negotiate permits in Tribe's name
 - Police service
 - Tribal court
 - Throughout Title 25 of the U.S.C., in understanding tribal interests, always defers to tribal understanding
 - Need to honor connectivity
- S.Armor (EPA/ORC): Has DOI ever issued an opinion as to the status of any of these lands as Indian country?
- J.Bennett: No State jurisdiction in MRA
 - In Tribe's view, the reason BCNP and ENP exist is because the Tribes were there. The Park and Preserve were established with the understanding that the Tribe would remain there
 - There are camps in WCA-3A and WCA-3B
 - Why do these lands not qualify as dependent Indian communities under 1151(b)?
 - BCNP and ENP are federal lands under federal superintendence
- K.Minoli(outside counsel for MTIF):
 - This consultation is supposed to happen before the federal government makes a decision to transfer a program. Tribe concerned that this decision not being made first
- J.Gettle: EPA believes we've applied the definition of Indian country consistently. We wanted to offer an opportunity to discuss. Is there something we have failed to consider? Florida has assumed other environmental programs over these areas (e.g., CWA Section 402).
- J.Bennett: There is a broad definition of "Indian country" in NAGPRA.
- J.Gettle: Are there other facts that are specific to the three permits at issue that we ought to consider?
- K.Donaldson (MTIF): Both ENP and BCNP are obvious. There are tribal camps thorough areas of Florida State Parks as well (e.g., Collier Seminole, Fakahatchee Strand, Dade County).
- J.Gettle: Are you saying these meet the definition of Indian country?
- J.Bennett: MOA with State SHPO and PA have opportunities for comment.
- J.Gettle: There are mechanisms to identify and address these resources under NHPA. Let's assume we know where the tribal historic resources are. Do you believe that these resources fall within the definition of Indian country?
 - J.Bennett: Yes, to the extent they need to be protected. We can't know the location of all resources - it depends on location.
- K.Minoli: Look at our comment letter; it outlines the basis for Indian country.
- J.Gettle: Other issues?

- J.Bennett: With respect to trust responsibility, the Federal government cannot delegate that trust responsibility to the State of Florida
- J.Gettle: We have heard a statement that we have delegated our trust responsibility. Indian country is still going to be permitted by the federal government. We have not delegated our trust responsibility.
- **Ex. 5 Attorney Client (AC)**
- K.Minoli: How does EPA see its trust responsibility in dispute resolution or review of State-issued permits?
 - J.Gettle: Does the question differ based on whether the Tribe is a permittee, or a permit is on "tribal land" or both?
 - There is a process for EPA's role in the MOA, Program regulations, PA, OA
 - Tribe can be a permittee on non-Indian country. Does the Tribe see this differently?
 - K.Minoli: To the extent that the Tribe seeks a permit on land to which the Tribe claims no interest, how does the EPA see its trust responsibility?
 - S.Kupchan (EPA/OGC): Under the MOA, if FDEP receives an application that has reasonable potential to impact waters within Indian country, FDEP must provide notice to the affected Tribe.
- Issues w/r/t Individual permits of concern:
 - Chickeechobee Airboat - WCA-3A (Leased Lands). Traditional camp for elders and meeting place. Adjacent to MRA, other side of Hwy 41
 - Susie Billie - BCNP. Traditional camp, not held in fee simple. Predates establishment of BCNP.
 - Tigertail - WCA-3B. Located on top of federal levee. Whatever activity occurs there will impact the levee. Note this is not within the Leased Lands.
- J.Bennett: What were the discussions about why these areas were not retained by the Corps?
 - J.Gettle: We did not see these lands as fitting within the definition of Indian country.
 - K.Minoli: Can we walk through the flow chart (attached) to see where these fell off?
 - J.Gettle: We're not in a position to do this today. We'd like to consider what you've raised and get back to you.
 - L.Maher (EPA/OGC): Pointed to provision in MOA that discusses when/how we consider these implementation questions
 - S.Kupchan: The discussion we're having now was contemplated by the MOA. Didn't disclose these conversations.
 - J.Bennett: It all comes back to the definition of Indian country. Asking for some understanding w/DEP that these three permits should be put "on hold" until this has been addressed.
 - K.Hurld (EPA/OW): Not sure that the EPA has the authority to put these on hold. Does the Tribe have to request that the State hold them?
 - J.Bennett: What is the process for such a request? Appropriate contact(s)?
 - Stephanie Gray and Heather Mason at FDEP would be good people to reach out to. CC EPA and Corps staff. S. Armor will provide J. Bennett with names of EPA staff to copy on that request.
- K. Minoli: Tribe considering whether it will provide additional information in writing. Will let us know by beginning of week of Jan. 19 if it will provide more.
 - S. Armor: To the extent that the Tribe would like to provide its perspective on how/why these lands meet the definition of Indian country - DIC in particular - that would be helpful.
- J. Bennett acknowledged upcoming presidential transition. They are willing to wait to resolve this until after transition.
- EPA will follow up within a month to check in on the status of our work. We may not have a full resolution by then, but we will let you know about our progress.



SUZANNE K. ARMOR | ATTORNEY-ADVISOR
 United States Environmental Protection Agency
 Office of Regional Counsel
 Water Legal Office

61 Forsyth Street, S.W.
Atlanta, Georgia 30303
tel: 404.562.9701
fax: 404.562.8078
armor.suzanne@epa.gov
She/Her/Hers

CONFIDENTIALITY NOTICE: This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual(s) or entity(ies) to whom or to which it is addressed. This communication may contain information that is proprietary, privileged, or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message.